IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

Crl.MC.No. 4274 of 2005()

CC.845/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ADOOR
CRIME NO. 708/04 OF ADOOR POLICE STATION

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PETITIONER:

THULASEEDHARAN PILLAI ALIAS THULASI,
S/O.BHASKARAN PILLAI, PALAVILA VEEDU,
WEST OF KADAMBANAD DEVI TEMPLE,
THEKKADA MURI, KADAMBANAD VILLAGE.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
ADOOR POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. LAKSHMIKUTTY AMMA, W/O.SUNDARESAN
UNNITHAN, SUNIL NILAYAM,
MANNADI, KALAKKU KIZHAKKUMMURI, KADAMBANAD VILLAGE

R1 BY PUBLIC PROSECUTOR SRI. PREEZE
R2 BY ADV. SRI.K.P.SHAHUL HAMEED
SRI.RAJESH THOMAS

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 4274 of 2005

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Dated this the 5th day of March, 2007

O R D E R

The petitioner is the only accused in a prosecution under Section 420 I.P.C. Cognizance has been taken by the learned Magistrate on the basis of a final report submitted by the police after due investigation. The investigation commenced on the basis of a private complaint filed by the defacto complainant/second respondent herein before the learned Magistrate. The complaint was referred to the police under Section 156(3) Cr.P.C. It is thereafter that the final report was filed.

2. The crux of the allegations raised in the complaint is that the second respondent was induced to part with an amount of Rs.10 lakhs on the plea that a petrol bunk shall be allotted to her. It is her contention that though such amount was received, no petrol bunk was issued in her name. Such a false representation was made only to induce the second respondent to part with the said amount of Rs.10 lakhs.

3. The learned counsel for the petitioner submits that even if the allegations were accepted in toto, no offence under Section 420 I.P.C. can be said to be revealed. He contends that the petrol bunk was one which could be allotted to widows of deceased service personnels. The complainant could have never expected allotment of the petrol bunk in her favour. In these circumstances offence under Section 420 I.P.C. cannot, at any rate, be attributed against the petitioner.

4. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. I am of the opinion that it is for the petitioner to appear before the learned Magistrate and claim discharge/acquittal as he is advised to.

5. The powers under Section 482 Cr.P.C. are extra ordinary inherent powers, which are to be invoked only in exceptional cases in aid of justice. The mere fact that the accused person may be entitled to discharge/acquittal is no reason for the court to short circuit the proceedings in accordance with the Code and invoke powers under Section 482 Cr.P.C. I do not want to make any observations on merits about the acceptability of the rival contentions. I am satisfied that relief in this petition can be denied to the petitioner on the short ground that there are no compelling circumstance

which can persuade this Court to invoke the powers under Section 482 Cr.P.C. The petitioner must appear before the learned Magistrate and claim discharge or acquittal as the case may be in accordance with law.

6. This Crl.M.C. is accordingly dismissed. I may hasten to observe that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner to claim discharge under Section 239 Cr.P.C. or acquittal at a later stage of the proceedings.

(R. BASANT)
Judge

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